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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/617,036	07/14/2000	Woo Hyun Paik	0630-1127P	6100

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Birch Stewart Kolasch & Birch LLP
P O Box 747
Falls Church, VA 22040-0747

EXAMINER	
DEMICCO, MATTHEW R	
ART UNIT	PAPER NUMBER
2611	9

DATE MAILED: 06/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action	Application No. 09/617,036	Applicant(s) PAIK ET AL.	
	Examiner Matthew R Demicco	Art Unit 2611	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 13 May 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.

b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.

2. ☐ The proposed amendment(s) will not be entered because:

   (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);

   (b) ☐ they raise the issue of new matter (see Note below);

   (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.

4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

5. ☒ The a)☐ affidavit, b)☐ exhibit, or c)☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: *see attached action*.

6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

7. ☐ For purposes of Appeal, the proposed amendment(s) a)☐ will not be entered or b)☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: _____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a)☐ approved or b)☐ disapproved by the Examiner.

9. ☐ Note the attached Information Disclosure Statement(s)(PTO-1449) Paper No(s). _____.

10. ☐ Other: _____

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed 5/13/04 have been fully considered but they are not persuasive.

Regarding Applicant's argument that Tracton does not teach a cellular telephone, the Examiner believes this to be too narrow of an interpretation. Traction clearly discloses the use of a "cellular phone-based browser," which clearly could be a cellular phone as is well known in the art. Further, such a wireless browser device reads on the claimed mobile communication terminal. Even if the browser were not explicitly a cellular phone, but a device using the cellular phone network, it would still read on the claimed subject matter.

Applicant further argues that Tracton is concerned with web page content and never mentions that it is interested in telephone calls. Tracton is interested in scaling content based on, inter alia, network speed. As mentioned earlier, this network may be a cellular phone network. It is well known in the art that network speed is related to the quantity of connections or number of users using the network. What Tracton doesn't disclose, however, is using call quantity information. Consequently, Cerna is relied on for this single teaching.

Cerna clearly discloses dynamically varying the bandwidth of a packet based on changing traffic levels (See Abstract). These traffic levels clearly read on call quantity information. Cerna demonstrates that it was well known in the art to use network usage to vary bandwidth. In conjunction with the teachings of varying encoding rate of video signals based on network speed of a cellular telephone network of Tracton, this is the only limitation that is required to meet the claim. Further, Applicant argues that Cerna discloses nothing about transmitting video and audio

signals from motion picture information. The Examiner does not rely on Cerna to disclose these teachings.

Applicant further argues that Tracton and Cerna do not teach decoding data at a particular rate. Examiner points out that if the system as a whole is capable of encoding and transmitting data at a particular rate, the receivers would inherently be capable of decoding the received data at whatever particular rate it is encoded at in order for the system to work properly.

2. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

3. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Tracton discloses varying an encoding rate based on network speed.

Network speed, as is well known in the art, is directly related to network utilization. Cerna teaches dynamically adjusting bandwidth based on traffic levels, that is, call quantity. Motivation for combining the teachings of Cerna and Tracton was given as a way to maximize the number of connections by minimizing the bandwidth used in order to provide the greatest amount of service possible at the lowest cost. Such cost-saving techniques were well known in the art at the time the invention was made.

VIVEK SRIVASTAVA
PRIMARY EXAMINER